

REMARKS

The Office Action dated December 26, 2008 lists the following rejections: claims 1-5 stand rejected under 35 U.S. C. § 103(a) over Warwick (U.S. Patent Pub. 2001/0023957); and claims 3 and 5 stand rejected under 35 U.S. C. § 112(2). Applicant traverses all of the rejections and, unless explicitly stated by the Applicant, does not acquiesce to any objection, rejection or averment made in the Office Action.

Applicant respectfully traverses the § 103(a) rejection of claims 1-5 because the Office Action's proposed modification of the '957 reference does not address aspects of the claimed invention directed to the gate and body being positively biased relative to the drain. The Office Action acknowledges that the '957 reference does not teach that the gate and the body are shorted together and biased positively relative to the drain. The Office Action then simply concludes that it would be obvious to short the body and the gate in the device of the '957 reference "to use the MOS device as a breakdown diode." However, the Office Action fails to address the gate and body being positively biased relative to the drain as in the claimed invention. As such, the Office Action fails to present a prima facie case of obviousness as required to sustain a § 103(a) rejection. Thus, the rejection of claims 1-5 must be withdrawn.

Moreover, the Office Action's proposed modification of the '957 reference does not correspond to aspects of the claimed invention directed to a hybrid MOS-bipolar device that includes a MOS device and a bipolar device that is formed by the gate and the body of the MOS device being shorted together and biased positively relative to the drain (*see, e.g.*, paragraph 0010 of Applicant specification). In an effort to facilitate prosecution, Applicant has amended the body of claim 1 to explicitly recite aspects directed to a bipolar device. The cited portions of the '957 reference do not teach or suggest a hybrid MOS-bipolar device as in the claimed invention. As such, Applicant requests that the § 103(a) rejection of claims 1-5 be withdrawn.

In addition, the Office Action improperly relies upon Official Notice in an attempt to support the § 103(a) rejection. Specifically, the Office Action asserts that "shorting a gate and a body region is conventional and well known that is routinely practice to use transistors as a

breakdown diodes.” However, the Office Action fails to cite to any reference to support these assertions as required. *See, e.g.*, M.P.E.P. § 2144.03 (“It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known.”). In this instance, the ‘957 reference teaches that the source 13A and the body 15A are connected together for the transistor to function as a diode (*see, e.g.*, Figures 6 and 7, and paragraph 0044). As such, the only evidence of record indicates that the source and body of a transistor are connected together to form a diode, instead of the gate and body as asserted by the Office Action. As such, Applicant requests that the Office Action provide documentary evidence to support the use of Official Notice. Without such evidence, the § 103(a) rejection of claims 1-5 cannot be maintained.

Applicant respectfully traverses the Examiner’s withdrawal of claims 22-24, which were not subject to any restriction requirement. The Examiner has not presented any basis for the withdrawal of claims 22-24. Applicant notes that claims 22-24 were added in the Response dated October 23, 2008, and Applicant indicated that claims 22-24 were part of the elected species that included claims 1-5. As such, claims 22-24 are not labeled as being withdrawn and they should be examined.

Applicant has added new claims 25-31. Applicant submits that new claims 25-31, as well as pending claims 22-24, are allowable over the ‘957 reference for at least the reasons discussed above. Applicant notes that support for new claims 25-31 can be found throughout Applicant’s disclosure including, for example, in Figure 1 and the related discussion in Applicant’s specification.

Applicant respectfully traverses the § 112(2) rejection of claims 3 and 5 because the scope of these claims would be clear to the skilled artisan based upon Applicant’s disclosure. Regarding claim 3, aspects directed to the gate oxide having multiple thicknesses would be clear to the skilled artisan in view of the gate oxide thicknesses 114 and 115 shown in Applicant’s Figure 1 and discussed in paragraph 0012 of Applicant’s specification. Regarding claim 5, aspects directed to the device having a circular geometry would be clear to the skilled

artisan in view of paragraph 0013 of Applicant's specification. However, Applicant submits that the § 112(2) rejection of claims 3 and 5 is moot in view of the above presented claim amendments. Accordingly, Applicant requests that the § 112(2) rejection of claims 3 and 5 be withdrawn.

In view of the above, Applicant believes that each of the rejections has been overcome and the application is in condition for allowance. Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is asked to contact the agent overseeing the application file, Peter Zawilski, of NXP Corporation at (408) 474-9063 (or the undersigned).

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